



# Proactive People Practices: Reducing Risk in a Unionizing Climate

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**Seyfarth Shaw LLP**

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# Agenda

- 1 | Union Activity by the Numbers
- 2 | What You Need to Know About the Process
- 3 | Dos and Don'ts
- 4 | Avoidance (aka Positive Employee Relations)



# Union Activity by the Numbers



# Union Organizing at Record Highs

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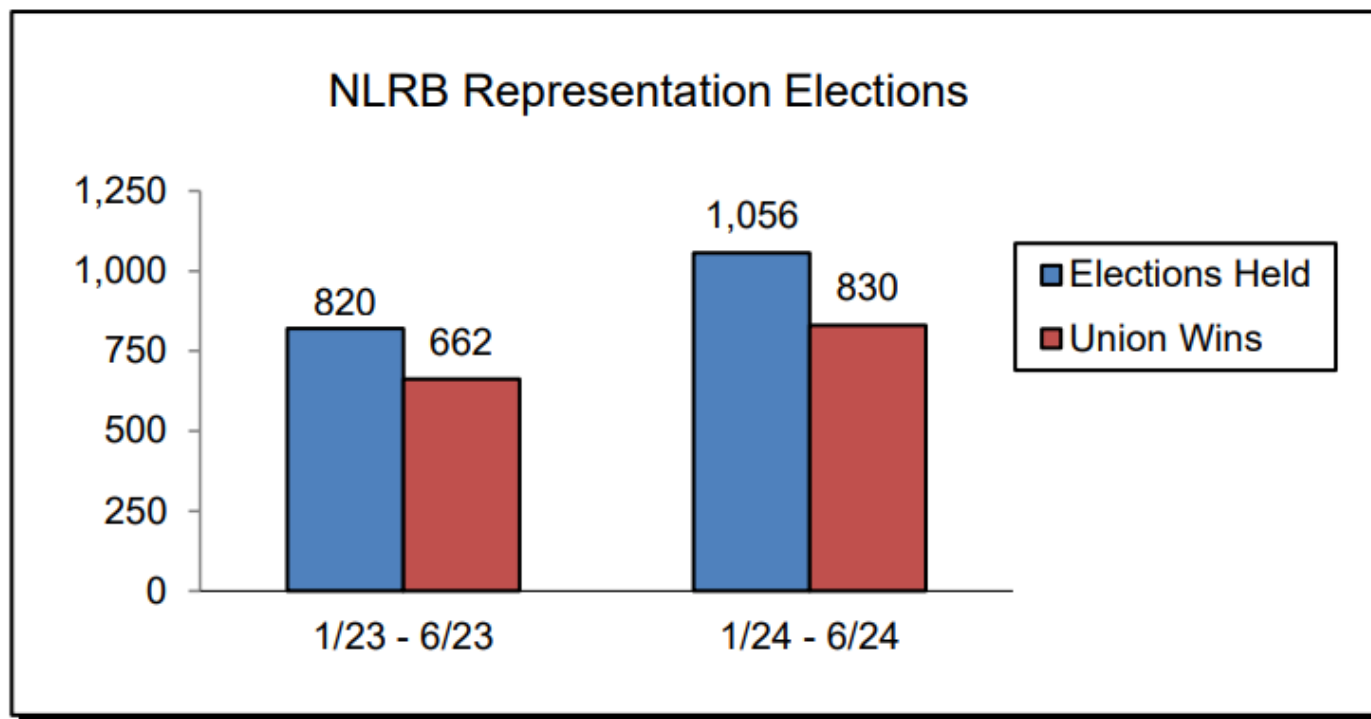
## Union representation petitions are increasing

- Unions currently enjoying highest public approval ratings in nearly 60 years (71%)
- 80% uptick in union election wins, with unions winning 79-81% of elections in 2023 and 2024
- Consider: typical union win rate was historically around 50%. This is a sea change.

***According to the BLS Annual Report, union membership grew by 139,000 in 2023.***

# NLRB Representation Elections

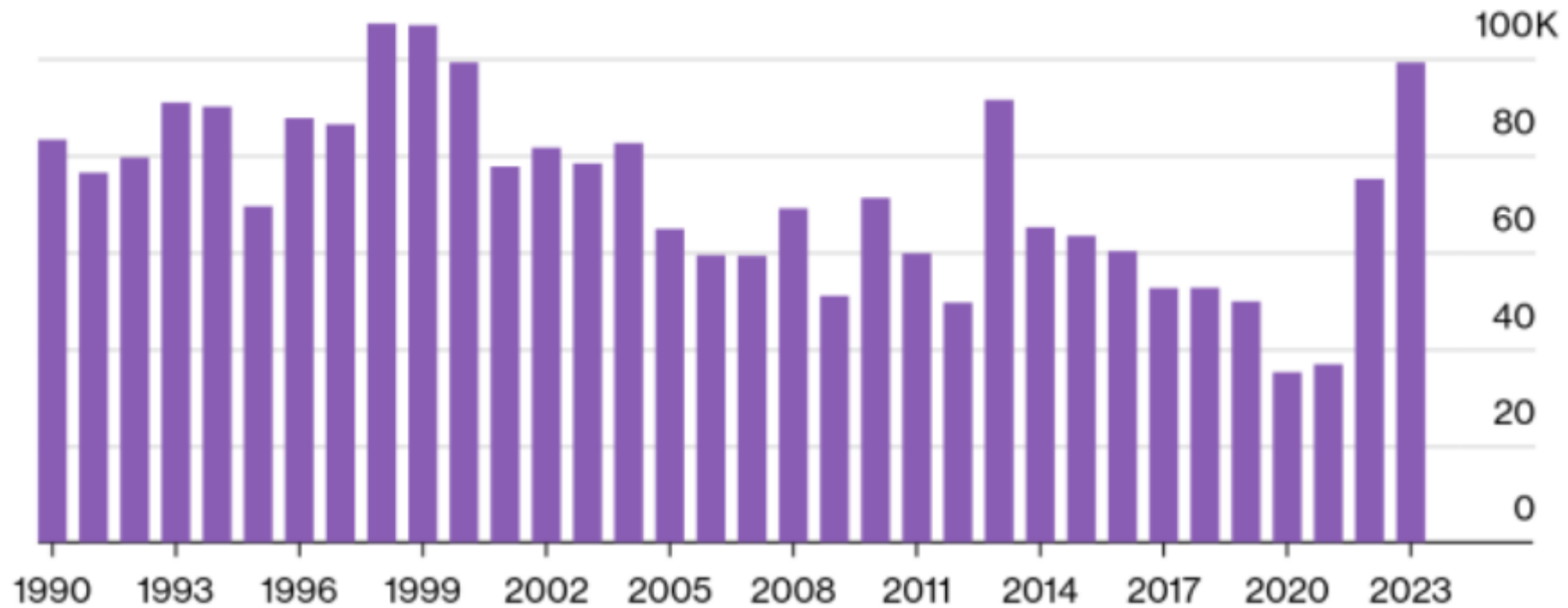
There were 236 more NLRB representation elections held during the first six months of 2024 than in the first half of 2023, according to preliminary data analyzed by Bloomberg Law. Unions won 79% of 1,056 representation elections held during the first six months of 2024, down slightly from 81% of 820 elections held during the same period in 2022. This is the largest number of elections since 2005, the largest number of union wins since 2000, and the second-highest win rate for unions since Bloomberg Law began publishing these reports in 1990.



# Union Ranks Swell with Newly Organized Workers

## Union Ranks Swell With Newly Organized Workers

Total workers organized in NLRB representation elections, 1990–2023



Source: Bloomberg Law labor data.

Elections that had challenges pending as of Feb. 9, 2024, are not included. 2013's total includes a 44,919-member bargaining unit that voted to switch from one union to another.

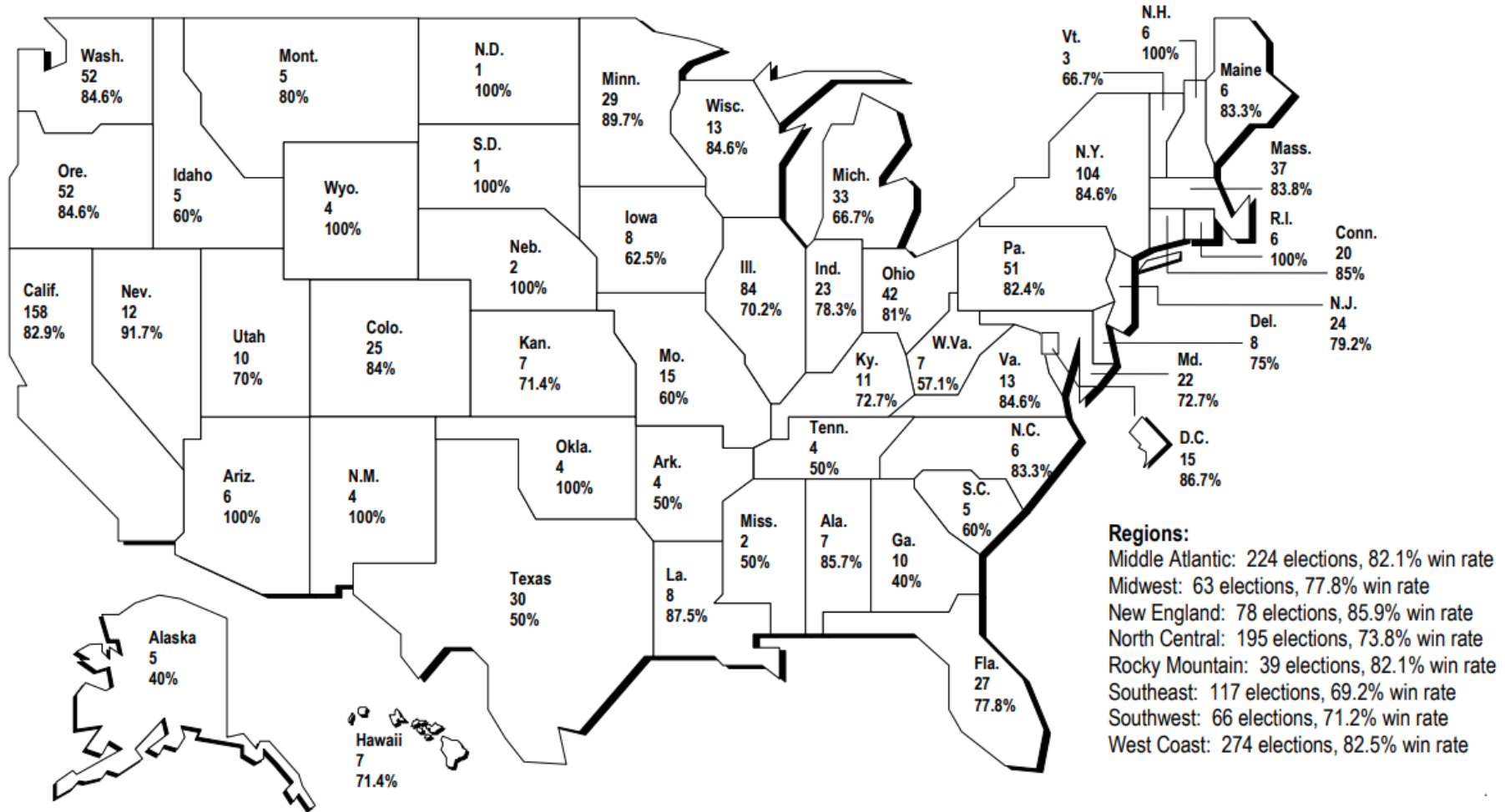
Bloomberg Law

# 2023 Union Elections in the Pacific Northwest

State	Number Held	Number of Union Wins	Percent of Union Wins
Alaska	6	6	100%
California	296	251	84.8%
Idaho	15	12	80%
Montana	4	4	100%
Oregon	80	65	81.3%
<b>Washington</b>	<b>80</b>	<b>68</b>	<b>85%</b>

# NLRB Representation Elections

**NLRB Representation Elections**  
**Number of Elections Held & Percentage of Union Wins, by State, Mid-Year 2024**

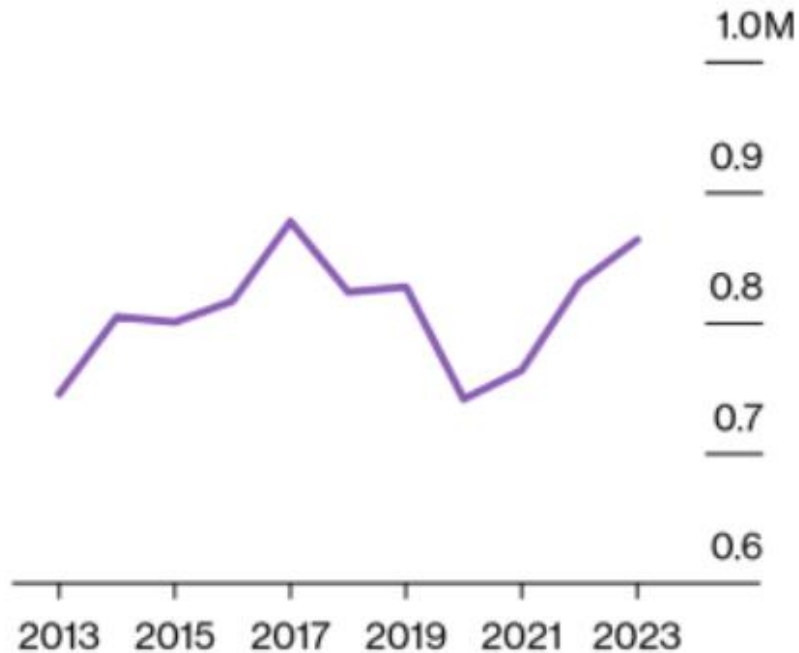


# Unions Gain Ground with Younger Workers

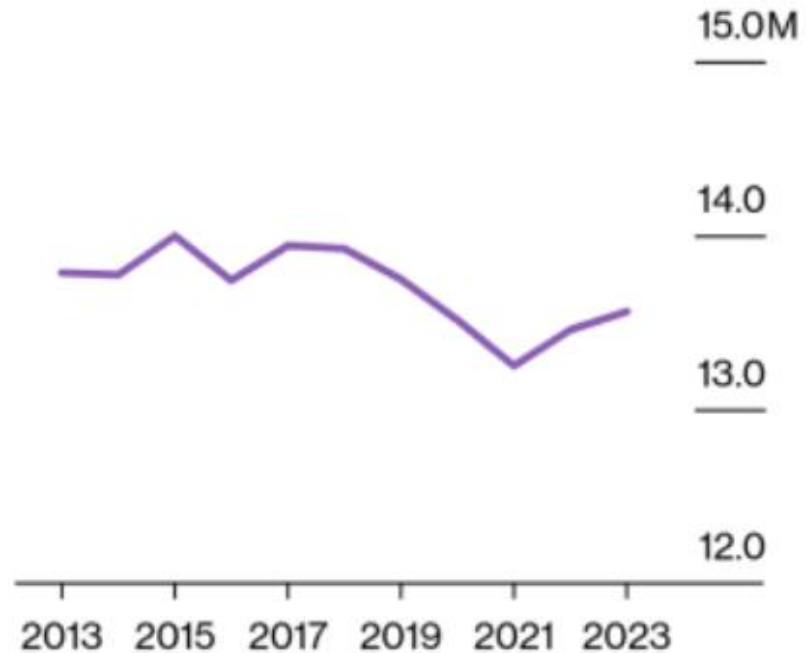
## Unions Gain Ground With Younger Workers

Total union members by age group, 2013–2023

Age 16–24



25 and older

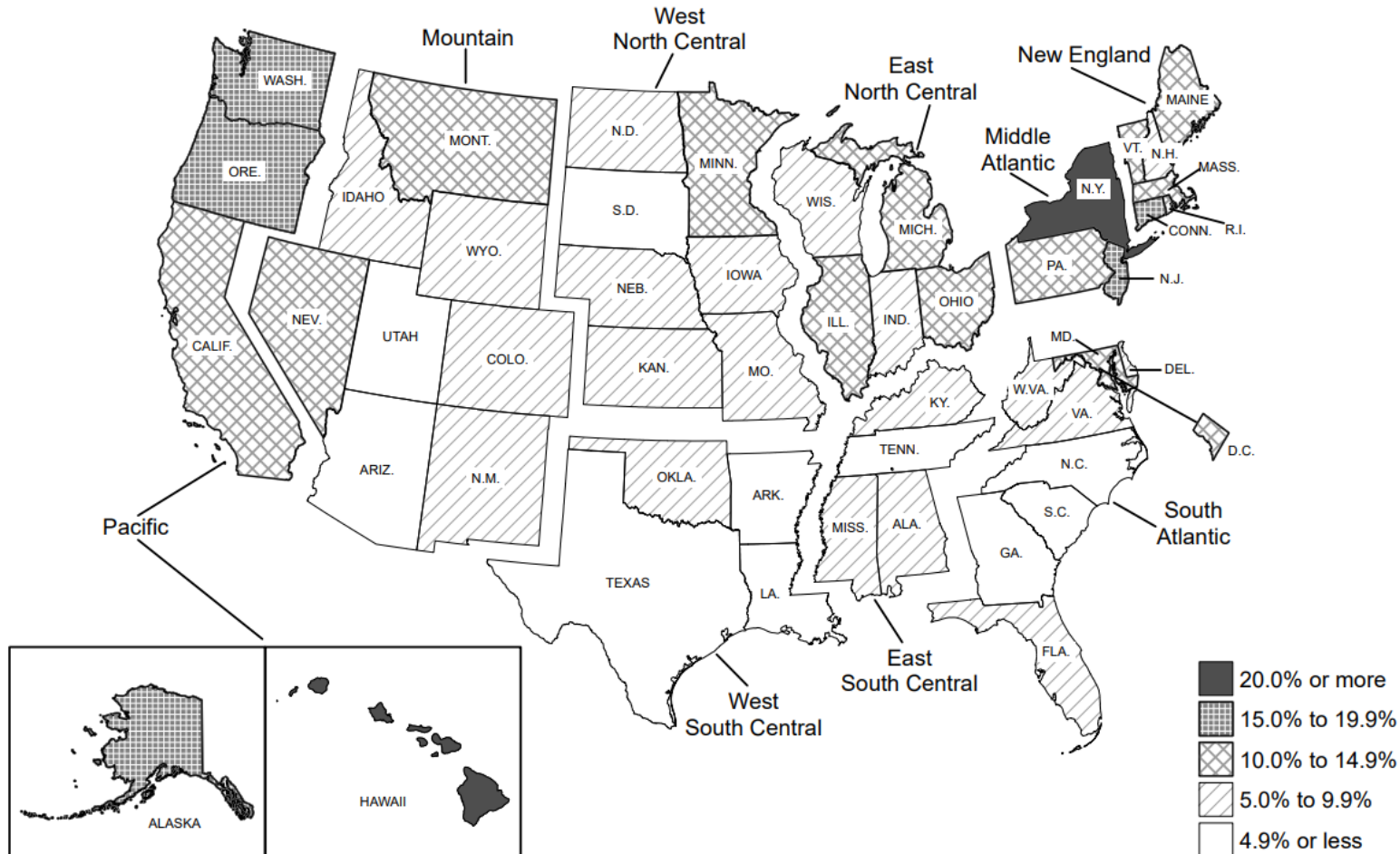


Source: Bureau of Labor Statistics

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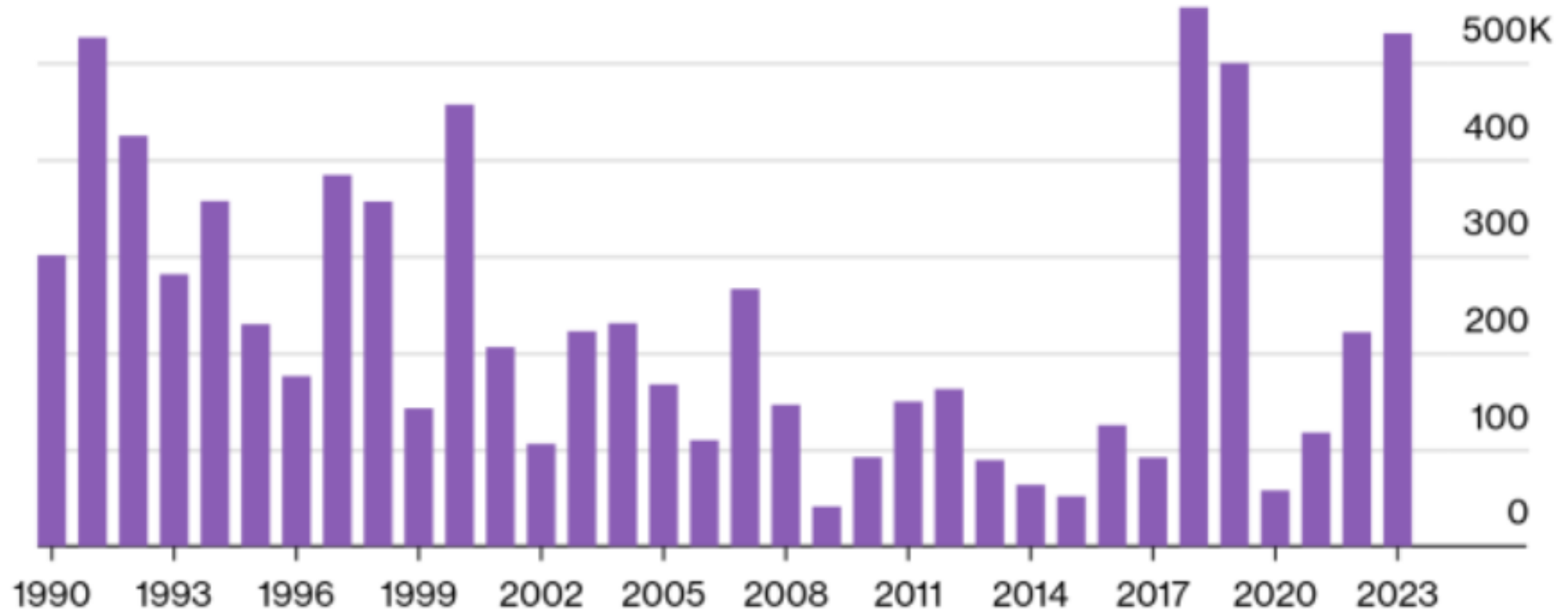
# Unions Membership Rates by State (2024)

(U.S. rate = 9.9 percent)



# Strike Activity

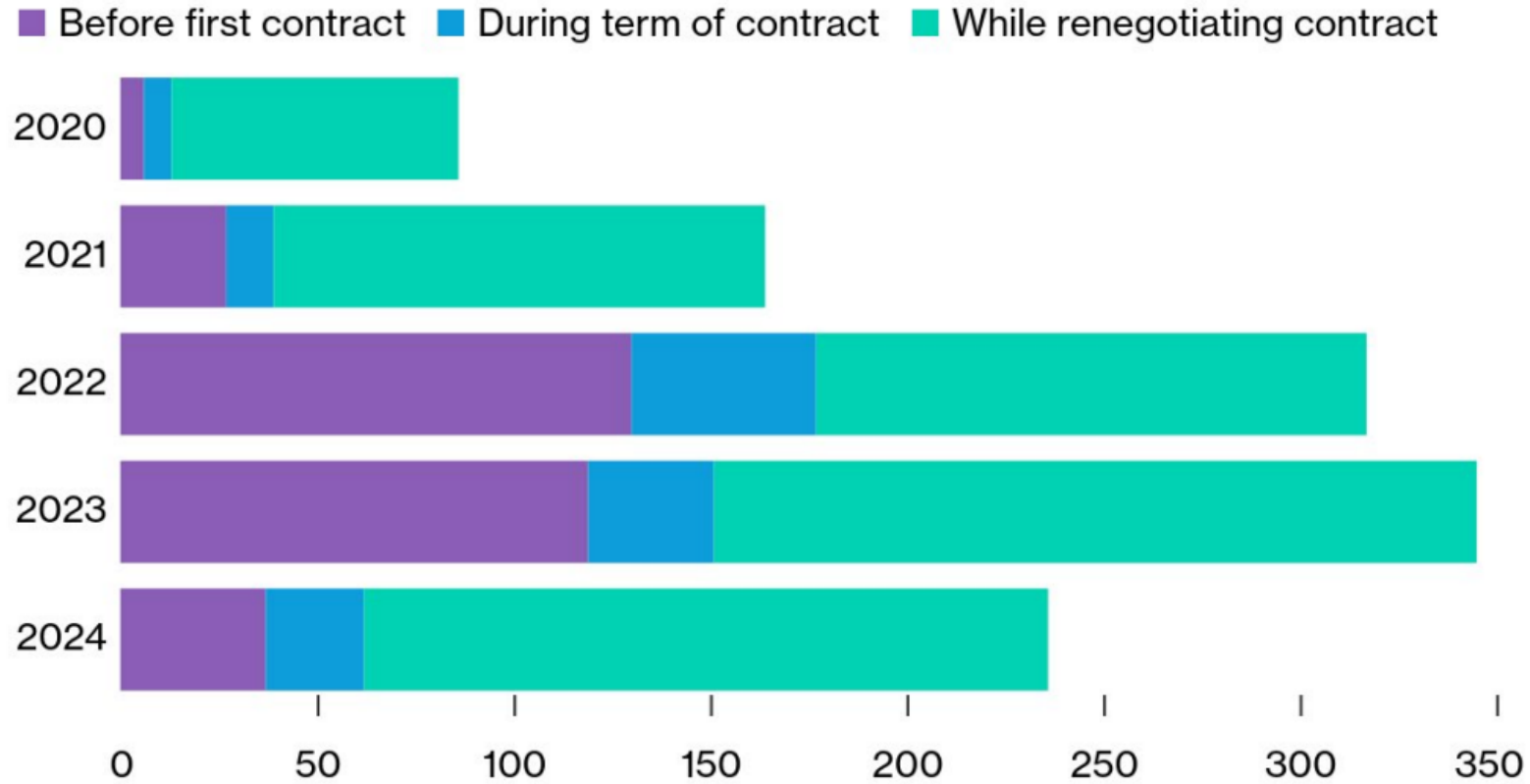
**Strikes Have Workers Walking Out in Near-Record Numbers**  
Total workers idled by union-initiated work stoppages, 1990–2023





# Strike Activity

## When Unions Initiate Strikes, 2020–2024



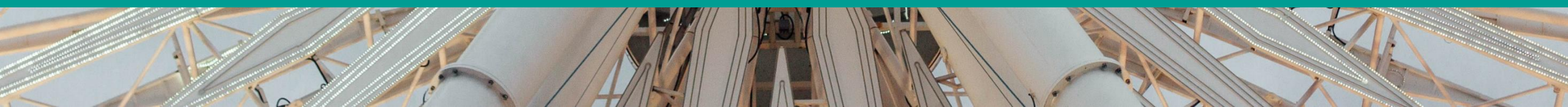
Source: Bloomberg Law Labor Data

Note: "Before first contract" total includes pre-election strikes called by unions as part of labor organizing efforts.

Bloomberg Law



# What You Need to Know About the Unionization Process



# What Sparked the Resurgence of Unions?



- Unions have become savvier about using social media and other apps/platforms to organize
- Generational shifts
- Media coverage and current political climate are supportive of organized labor
- Social justice issues
- Heightened expectations that employees have of their employers

# Early Warning Signs



- New leaders step forward with a more strident tone
- Complaints brought forward **by a delegation, not single employees**
- Strangers appear and linger around Company premises
- Employees show unusual curiosity about Company affairs and policies
- A new, technical vocabulary surfaces which includes phrases such as “**protected activity**,” “**unfair labor practices**,” and “**demand for recognition**”
- Union authorization cards, handbills or leaflets appear on the premises or in parking areas
- Any activity which **appears to be out of the ordinary** and seems to be separating management from staff

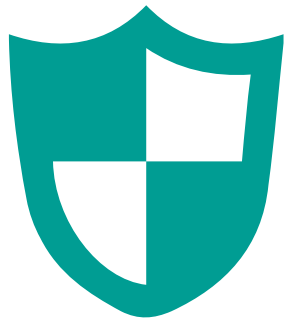
# How Does a Union Get “Certified”?

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- The “Bargaining Unit”
- The “Showing of Interest”
- The “Demand for Recognition”
- The “Representation Petition”
- The Campaign
- The Election
- The “Duty to Bargain”

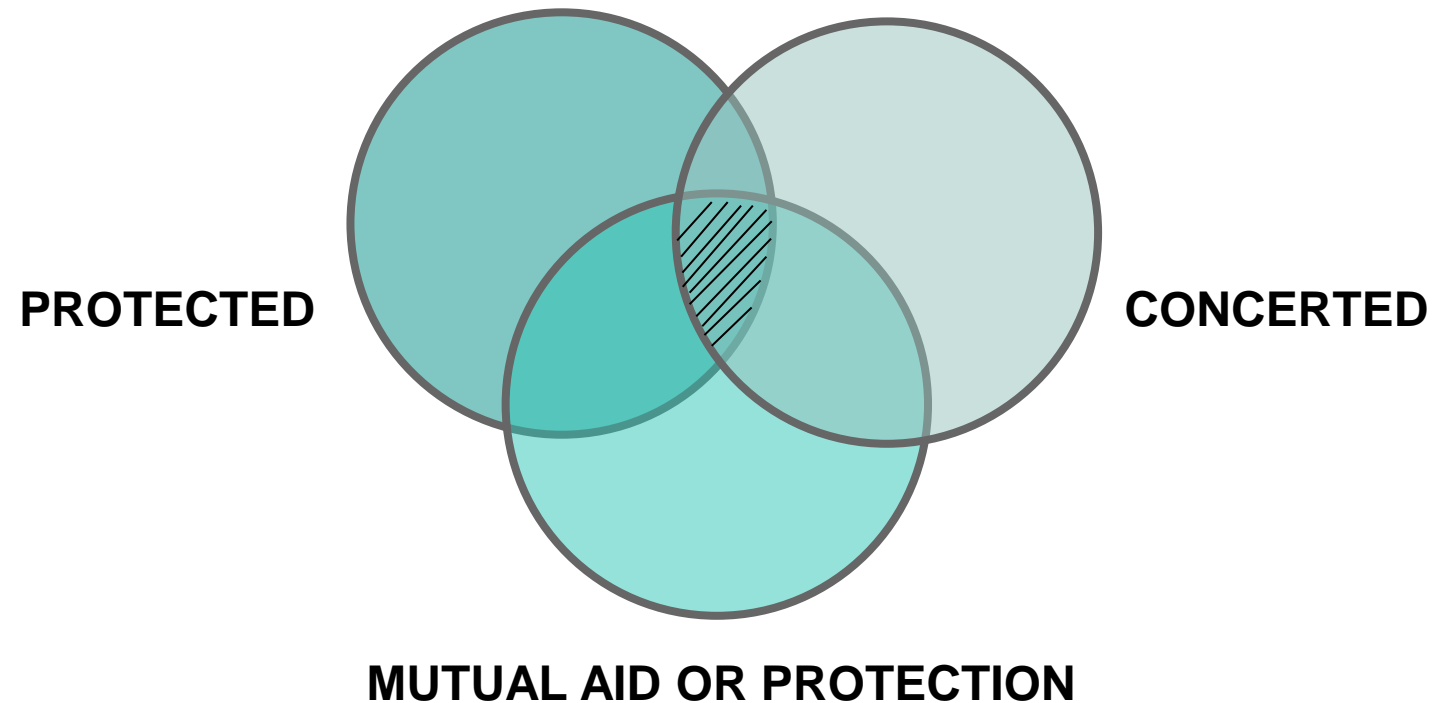
# The NLRA: Who is Protected By the Act?



- NLRA applies to unionized and non-unionized workplaces.
- **Section 7** protections apply to “employees” only and not supervisors
- A “**Supervisor**” under the NLRA means:
  - “Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”
- Job Title is **NOT** a factor
- Hourly vs. Salary is **NOT** a factor

# NLRA Section 7: Protected Concerted Activity

Employees shall have the right to self-organization, ***to form, join, or assist labor organizations, to bargain collectively through representatives*** of their own choosing, and ***to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection***, and shall also have the right to refrain from any or all of such activities . . . .





# Recognizing & Responding Effectively to Union Organizing: Dos and Don'ts



# Recognizing & Responding Effectively To Organizing: The Don'ts

**TIPS** for remembering what you can't do or say to employees:

- T** Threats
- I** Interrogation
- P** Promise
- S** Surveillance

# DO NOT THREATEN



## Supervisors cannot:

- Predict the loss of jobs, reduction of pay or benefits, or less favorable working conditions
- Say that there will be a strike if a union wins
- Say the employer will refuse to bargain or change its positions
- Predict that the office will be moved or shut down if a union wins
- Say a union can't get employees higher pay, better benefits, improved working conditions or anything else (futility)
- Tell employees not to talk about the union, compensation, benefits, or other terms and conditions of employment
- Threaten disciplinary action for engaging in protected conduct

# DO NOT INTERROGATE



## Supervisors cannot:

- Ask employees what they think or how they feel about a union
- Ask employees why they want a union
- Ask employees whether they have signed a union authorization card or attended union meetings
- Ask employees which other employees support a union
- Ask employees how they intend to vote
- Call employees individually or in small groups into an office or other private, non-work areas to talk about a union

# DO NOT PROMISE



## Supervisors cannot:

- Promise or imply increased compensation, promotions, or better benefits to obtain support for the employer
- Promise or imply employees will be rewarded in exchange for providing information about the union, voting against a union, not engaging in union activity
- Ask employees about their grievances, complaints or issues or tell employees that the employer will make changes (implied promise of benefits)
  - BUT this does not mean you must, or should, abandon your regular practice of addressing employee concerns as they arise.

**DO NOT**  
**S**<sub>SPY</sub>



### **Supervisors cannot:**

- Ask employees to report the identities of union sympathizers
- Accept an invitation to a private online pro-union employee group
- Take pictures of employees engaging in union activity
- Go to off-site locations or even locations on company property (e.g., break rooms or parking lots) where they know the union supporters are meeting
- Imply that they have someone on the inside telling them about union meetings

# Recognizing & Responding Effectively To Organizing: The Dos

**FOE for remembering what you can do or say:**

**F** Facts

**O** Opinions

**E** Experiences

# F ACTS



## Supervisors **SHOULD**:

- Factually refute statements made by the union about the company. For example:
  - Union promises higher pay, job protection, and to terminate certain managers if the union gets in.
  - Only thing a union can do if it comes in is ask and negotiate on behalf of employees regarding their compensation, hours, and other terms and conditions of employment (ex. vacation, overtime, schedule, etc.). It cannot guarantee any of its promises.
  - Even if a union comes in, union does not have a right to even ask about who will become managers or to terminate any managers.
- Share Facts:
  - Union can keep its promises **ONLY** if the company agrees
  - Union is not legally required to keep its promises
  - Union members are required to pay dues and fees to the tune of around hundreds or thousands dollars a year

# O PINIONS



## Supervisors **SHOULD**:

- Express your opinion that unionization is not in the best interest of employees. For example:
  - If I could vote in a union election, I would vote no because I'd rather deal directly with the company about terms and conditions of my employment rather than let a union who doesn't know me, or the business speak for me.
  - I can't vote in the election but if I could, I would vote no to the union because they cannot guarantee any of their promises. They cannot **GIVE** me higher compensation, more benefits, better work schedule **UNLESS** the company agrees. If that's the case, why should I pay them hundreds of dollars a year?

# EXPERIENCES



## Supervisors SHOULD:

- Discuss your own past experiences in union workplaces
- Question the union's motives – are they concerned about employees or just dues?
- Tell employees about unfavorable publicity involving the union/its representatives
- Explain the risks that come with unionization: collective bargaining.
  - What you have could stay the same, be better, or be worse off.
  - The CBA is negotiated by a union. If you want more retirement, but the union leadership wants automatic union dues withdrawals, what do you think union would push for?

# Your Obligations as a Leader

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- On the topic of unions, **leaders *must* have a position** and be able to communicate it confidently.
- Be present and available, **talk to your people and get answers to their questions.**
- Face-to-face communication is the best way to **build relationships** with teammates.
- **Own the message**, don't defer a response to another leader unless necessary. Ask for help gathering thoughts and facts, then talk directly to your staff.

# Why Does All This Matter?

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## If you break the rules . . .

- may be an unfair labor practice
- election result may be overturned
- company could be ordered to bargain
- If the union demands recognition and the company requests an election, the election may later be canceled and the union imposed because the company committed an unfair labor practice.

## But if you're too afraid to talk . . .

- employees may hear only one side
- more likely you end up with a union



# Avoidance

**(Cultivating Positive Employee Relations)**





## What Does “Positive Employee Relations” Mean?

- It’s **not** about becoming everybody’s best friend
- It **is** about forming and maintaining **respectful working relationships**
- It **is** about showing staff that you are available to them and want to see them succeed



## How Would a Union Impact Your Community?

- Reduced flexibility and discretion
- Increased operational costs
- Seniority v. Ability
- Loss of focus on the mission



## Engagement: The 85% - 15% Divide

- **According to a Gallup Poll:**

- 30% of employees are very engaged in their work
- 55% are non-engaged
- 15% are actively disengaged

# Which of these workplace issues matter most to employees?

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- Promotion and Growth
- Job Security
- Full Appreciation
- Interesting Work
- Loyalty to Employees
- Good Work Conditions
- Good Pay
- Tactful Discipline
- Help with Personal Problem
- Feeling of Being in on Things



## The Answer...

1. Full Appreciation
2. Feeling Of Being In On Things
3. Help on Personal Problems
4. Job Security
5. Good Pay



# Questions





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